IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Tr.P(C).No. 197 of 2007()

OP.393/2007 of FAMILY COURT, Ettumanoor
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: PETITIONER/PETITIONER

SONA ANTONY, AGED 27 YEARS,
D/O. LATE ANTONY, JOS DAYLE, KAMALIMUKKU P.O.,
SASTHAMCOTTA, NOW RESIDING AT THODIYIL HOUSE,
KAIKKULANGARA P.O., THANKASSERY, KOLLAM-7.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS: RESPONDENTS
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1. MARTIN T.A., S/O. LATE ANTONY,
THACHANKARY HOUSE, VAZHAPPALLY,
KIZHAKKUMBHAGOM KARA, CHANGANASSERY P.O.,
KOTTAYAM DISTRICT.

2. JOSE @ ROY, S/O. LATE ANTONY,
THACHANKARY HOUSE, BYE PASS ROAD, VAZHAPPALLY,
KIZHAKKUMBHAGOM KARA, CHANGANASSERY P.O.,
KOTTAYAM DISTRICT.

3. MARYKUTTY, W/O. LATE ANTONY,
THACHANKARY HOUSE, VAZHAPPALLY, KIZHAKKUMBHAGOM
KARA, CHANGANASSERY P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.JOMY GEORGE

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON 2346/07 IN Tr.P(C) 197/07

DISMISSED.

SD/- M.N.KRISHNAN, JUDGE.

5/12/2007

M.N.Krishnan, J.

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Tr.P(C).No.197 of 2007

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Dated this the 5th day of December, 2007.

JUDGMENT

This Transfer Petition is filed with a prayer to transfer O.P.No.393 of 2007 pending before the Family Court, Ettumanoor to the Family Court, Kollam for disposal on merits. The unfortunate parties are entangled in a series of litigations right from maintenance to divorce and the divorce matter is pending before this Court in appeal.

2. The transfer petitioner herein filed an O.P for return of the amount, gold ornaments, etc. before the Family Court, Ettumanoor and it is pending there as O.P.No.393 of 2007. Now the transfer is sought on the ground that the mother of the petitioner is unwell. She had sustained a fracture and had some heart problem and that she is having a small child and the distance to be covered is about 150 kms. On the other hand the respondents would contend that the transfer cannot be effected because the case was posted for trial at Ettumanoor and it has been adjourned at the instance of the petitioner on three occasions. She was physically present and further it was represented that there is a chance of settlement.

3. I am conscious of the fact that in a case of transfer of

matrimonial dispute, comparative hardship had to be taken into account. At the same time, it is equally important that the conduct of the parties also assumes significance. After filing the Transfer Petition, I am informed that three petitions are filed before the Family Court, Kollam seeking different reliefs by the wife. One can only classify those petitions as filed with an intention to get a transfer of this case from the Ettumanoor Court. It cannot be entertained. Further, it is clear that the matter was listed for trial by the Family Court, Ettumanoor and the petitioner had gone there to give instructions to the lawyer and the matter has been adjourned. Learned counsel for the respondents would contend that on three occasions, the case met with the same fate of adjournment and lastly it was got adjourned for settlement and thereafter a petition of this nature was filed for transfer. So, I find that there is considerable force in the contention of the respondents that what is working in the mind of the petitioner is to avoid the Family Court, Ettumanoor and try the case by some other courts and she had chosen the forum by filing three applications before the Family Court, Kollam.

4. Since the matter had reached the last stage, i.e., the evidence stage, I feel that the matter can be disposed of as expeditiously as possible by giving a direction to the Family Court at Ettumanoor to give accommodation and dispose of the matter as expeditiously as possible. Even if the mother is not able to come , it is seen that the petitioner is a person who was working

as a Teacher and she is even now further pursuing her studies, which will show that she is a person capable of looking after herself.

5. Therefore I decline to exercise jurisdiction and transfer the case. But I make it clear that if any accommodation is necessary and after evidence is over, the court need not insist for her personal presence on every date of posting. Prayer for transfer is thereby rejected.

Transfer Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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